



UNITED  
STATES  
INTERACTIVE &  
MICROWAVE  
TELEVISION  
ASSOCIATION

93-253

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April 3, 1995

MAIL ROOM

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W. Room 222  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: Comments on TEC's Petition for Emergency Waiver of  
Section 24.709 (a)(1)

Ladies and Gentlemen:

Please find enclosed, on behalf of USIMTA/USIPCA, an  
original and four copies of Comments relating to TEC's  
Petition for Emergency Waiver.

If there are any questions concerning this matter,  
please contact the undersigned.

Sincerely yours,

  
Lynnea Bylund Dalton  
President

Enclosures

No. of Copies rec'd  
List ABCDE

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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20054

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In re Implementation of )  
Section 309 (j) of the ) PP Docket No. 93-253  
Communications Act - )  
Competitive Bidding )  
 ) DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS IN RESPONSE TO  
TELEPHONE ELECTRONICS CORPORATION  
REQUEST FOR WAIVER OF SECTION 24.709(a)(1)

I. INTRODUCTION

1. The United States Interactive & Microwave Television Association ("USIMTA") and the United States Independent Personal Communication Association ("USIPCA")<sup>1</sup>, pursuant to Sections 1-415 and 1-419 of the Commission's Rules and Public Notice, DA 95-651, released March 29, 1995, submit these Comments in response to the "Emergency Petition for Waiver," filed March 28, 1995 by Telephone Electronics Corporation ("TEC").

<sup>1</sup> USIMTA/USIPCA are nonprofit associations comprised of wireless cable TV operators, interactive TV operators, specialized Mobile radio operators, PCS auction winners, paging operators, licensees, consultants, applicants, equipment manufacturers, engineers, and small businesses and other designated entities.

2. USIMTA/USIPCA, in prior Comments and Petition<sup>2</sup>, have urged the Commission to adopt very aggressive measures to ensure maximum participation in the broadband and narrowband PCS auctions by small businesses and other designated entities. Small businesses, and women and minority-owned businesses, have historically been excluded from participation in the telecommunications industry. To rectify the underrepresentation of small businesses and other designated entities in the telecommunications industry, Congress enacted Section 309(j)(4)(D) of the Communications Act which requires the Commission to ensure that small businesses and other designated entities are given the opportunity to participate in the provision of spectrum-based telecommunications services.

3. In the Order establishing PCS the Commission, among other things, adopted rules to provide opportunities for small entities and businesses owned by women and minorities to provide broadband PCS services. Specifically, the Commission established: (1) two entrepreneurs' blocks (frequency blocks C and F) for which only companies with less than \$125 million in annual gross revenues or less than \$500 million in total assets are eligible to bid; (2) bidding credits that will be granted both to small businesses and to businesses owned by women and minorities in the entrepreneurs' blocks; (3) that certain winning bidders will be permitted to pay the license price in installments, and the interest rate and moratorium on principal payments will be adjusted to assist small businesses, as well as women and minority-owned businesses; (4) a tax certificate program; (5) broadband PCS licenses for rural telephone companies that are geographically partitioned

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<sup>2</sup> See USIMTA/USIPCA's "Petition for Reconsideration" filed August 22, 1994 and its "Comments in Response to Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking" filed January 13, 1995 both in PP Docket No. 93-253. These two pleadings are specifically incorporated by reference herein.

from larger PCS service areas: and (6) upfront payments of \$0.015 per MHz per pop, in contrast to \$0.02 required in other blocks.

4. The Commission established these rules in response to a Congressional mandate that small businesses, rural telephone companies, and businesses owned by minorities and women, each be given the opportunity to participate in the provision of spectrum-based services [47 U.S.C. §309(j)(4)(d)]. However, these new rules and policies do not provide realistic opportunities for "true" small businesses in general, or for women and minority-owned small businesses. The standards for participation are already set too high and will simply allow substantially large business entities to qualify as designated entities and thus unfairly compete against "true" small businesses.

**THE COMMISSION SHOULD DENY TEC'S  
EMERGENCY PETITION FOR WAIVER**

1. TEC's request for emergency waiver of Section 24.709 (a)(1) of the rules, to the extent that such rule is applied to include revenues of TEC's non-rural telephone company affiliates, should not be granted. In spite of TEC's well articulated arguments to the contrary, it is in fact a relatively large company whose combined revenues exceed the current \$125 million gross revenue standard for participation in the entrepreneurs' block C and F license auctions.

2. As noted above, the Commission's financial standards for eligibility to participate in the entrepreneurs' block are already too high and should be lowered. The Commission limited eligibility for bidding in the entrepreneurs' blocks to entities, together with their affiliates, that have gross revenues of less than \$125 million in each of the last two

years and/or total assets of less than \$500 million. The Commission has erroneously concluded that the \$125 million gross revenue/\$500 million asset caps would have the effect of excluding the large companies that would easily be able to outbid designated entities and frustrate Congress's goal and statutory mandate of disseminating licenses among a multiplicity and diversity of entities. Entities that come anywhere close to having \$125 million in gross revenues and \$500 million in assets are large companies and should not be allowed to compete with small businesses and small businesses owned by women and minorities. The standards set by the Commission effectively allow relatively large companies to compete with the smallest of companies, ones which are also more likely to be owned by women and minorities. The net result of this will undoubtedly be that companies just under the cap will outbid companies that are far below, notwithstanding the ability of such true small companies to raise capital.

3. In its prior Comments and Petition USIMTA/USIPCA argued that the Commission's financial definition of small business should be reduced in accordance with the definition of small business as determined by the Small Business Administration ("SBA"). In the Second Report and Order, 9 FCC Rcd 2348, q 267, released April 20, 1994, the Commission correctly adopted the SBA definition of a small business, permitting such applicants to qualify for installment payments, a 25% bidding credit, and tax certificates based on a net worth not in excess of \$6 million or \$2 million in gross revenues. However, in the Order the Commission changed the definition to a gross revenue standard of \$40 million. Small businesses are far less likely to be near the \$40 million gross revenue cap than to the \$6 million net worth/\$2 million gross revenue standard.

4. To allow entities, such as TEC, to further exacerbate this already tilted situation is simply not justified. To allow TEC, with its combined revenues exceeding \$125 million, to compete and receive the same benefits as companies with less than \$2 million in revenues serves only to further deny smaller entrepreneurs and entities a realistic opportunity to provide PCS services. The \$2 million/\$6 million standard is not overly restrictive and it provides the best opportunity for small business, including women and minority-owned businesses to effectively participate in PCS services. Small businesses are already being overshadowed by entities that have in excess of \$40 million - \$125 million in gross revenues. Such a standard does not result in participation of "true" small business and therefore does not comply with Section 309(j)(4)(d) of the Communications Act. The current situation must not be compromised any further.

5. To otherwise allow this waiver would make the \$40 million to \$125 million gross revenue standard for "small" businesses an even further mockery of Congress' goal of providing small businesses and other designated entities with an opportunity to participate in the new spectrum-based services. Congress specifically identified small businesses as one of the underrepresented groups in telecommunications for which opportunities to participate in spectrum-based services must be granted. The Commission is not fulfilling Congress' mandate of offering assistance to small business when it allows the pool of qualifying applicants to be significantly larger and dominated by relatively wealthy companies. As a result, the companies that have traditionally been considered "small" by SBA or any other accepted rationale and sound economics-based standards are once again placed at a competitive disadvantage against companies that are more than likely to be substantially larger.

V. Conclusion

10. For the foregoing reasons, USIMTA/USIPCA urge the Commission to deny TEC's request for emergency waiver. In summary, to grant TEC's waiver request would constitute a de facto raising of the already way too high eligibility standard. Indeed, the Commission should lower the eligibility requirements for participating in the entrepreneurs' blocks auction, as well as lowering the gross revenue requirement, to encourage true small businesses participation -- thereby fulfilling Congress' and the Commission's own announced and laudable goals.

Respectfully submitted,

USIMTA/USIPCA

By   
Lynnea Bylund Dalton  
President

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April 3. 1995

**CERTIFICATE OF SERVICE**

I, Nancy A. Gulla, a secretary with USIMTA/USIPCA,  
hereby certify that on this 1st day of April, 1995, copies  
of the foregoing "Petition for Reconsideration" were sent by  
Federal Express to the following offices:

Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

Honorable James H. Quello  
Commissioner  
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Honorable Andrew C. Barrett  
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Nancy A. Gulla